**THE HON'BLE SRI JUSTICE D.APPA RAO**

**W.P.No.7647 of 1997 and A.S.No. 3690 of 2000**

**COMMON JUDGMENT:**

The appeal and writ petition involve a question as to the nature of tenure of Ac.8.56 cents of land in T.D.No.948 (Sy.No.155) of Vizianagaram (Bit-1) and consequent entitlement or patta. While the appellants - writ petitioners obtained ryotwari patta under A.P. Estate Abolition Act, 1948 (for short 'the Act, 1948') from the Settlement Officer, the respondent institution (MANSAS) obtained a patta under Section 7 (1) of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'the Act, 1956') from Special Deputy Tahsildar (Inams), Vizianagaram.

2. The facts in brief are Late Raja Saheb of Vizianagaram purchased the disputed land along with some other land under a registered sale deed dated 04-08-1894. The lands were being cultivated by the tenants. The then Estate Collector assigned the above said land to one V.G. Subbaiah Pantulu under a zeroiti patta. It was in possession and cultivation of ryots. The Settlement Officer, after enquiry, granted ryotwari patta in favour of late Prasadula Adinarayana, the predecessor in the interest of appellants-writ petitioners. In fact his successive tenants purchased the land from the earlier tenants under registered sale deed.

3. Late Raja Saheb has created a trust under the name and style of Maharaja Alakh Narayana Society of Arts & Science (for short 'MANSAS') and endowed various agricultural and non agricultural lands including disputed land under Trust deed dated

12-11-1958. The Special Deputy Tahsildar (Inams), on an application filed by the MANSAS to issue ryotwari patta in respect of Ac.39.69 cents in T.D.No.948, Vizianagaram, granted patta under Section 7 (1) of the Act, 1956 by his order dated 31.10.1978 in favour of MANSAS while rejecting certain claims against other individuals. However, the claims made by the appellants-writ petitioners were rejected stating that it was an enfranchised minor inam and that the ryotwari platta issued by Settlement Officer in their favour was not valid.

4. Aggrieved by the same, the appellants-writ petitioners preferred an appeal under Section 7 (2) of the Act, 1956 before the Revenue Divisional Officer, Vizianagaram. By order dated 29-02-1992, the Revenue Divisional Officer, Vizianagaram, allowed the appeal set aside the order of the Special Deputy Tahsildar (Inams) and cancelled the patta issued in favour of MANSAS. Consequently, he confirmed the ryotwari patta issued by Settlement Officer in favour of the appellants-writ petitioners. As against the said order, the MANSAS filed revision petition before the Commissioner, Survey Settlements and Land Records. The learned Commissioner by order dated 20-11-1995, remanded the matter to the Revenue Divisional Officer; 1) to conduct personal inspection of the suit land, 2) summoning the original records relevant, 3) to analyse the documents produced either side and 4) to determine the tenure of the land.

5. By virtue of the patta granted in favour of MANSAS, it filed O.S.No.19 of 1996 (re-numbered as 27 of 1999) for declaration of title that it is the absolute owner of the plaint schedule property and consequential possession and mesne

profits.

*6.* It was averred in the plaint that the disputed property is an enfranchised minor inam, purchased in 1884 from Inamdar grantee and from thereafter it was enjoyed as personal property of Rajah of Vizianagaram, through tenants from time to time. Late Raja created a charitable and educational trust under the name and style of MANSAS, endowed various agricultural and nonagricultural properties under the Trust Deed dated 12-11-1958. Ever since, the Trust has been in possession and enjoyment of the land through the tenants. In a family partition, the disputed property was allotted to Rajah Saheb in C.S.No. 495 of 1949 on the file of High Court, Madras, O.S.No.120 of 1948 on the file of Sub Court, Visakhapatnamm and O.S.No.21 of 1963 on the file of Additional District Court, Vizianagaram. Late Adinarayana, the father of D-1 and D-5 and husband of D-6, was a tenant right from the time he purchased from the tenant Late Tadi Appalanarasamma on 22-04-1950. Though the tenants are transferring their rights under registered sale deeds, as they do not have ownership rights, they have been continuing as tenants by paying rents to the Rajah of Vizianagaram. The then Inams Deputy Tahsildar, after serving notice under the Act XXXVII of 1956, held that the property belongs to the Rajah. The settlement fair adangal was prepared after abolition of the estates and the land was transferred as Inam. The name of late Prasadula Adinarayana was mentioned as cultivating tenant in the revenue records. He and his sons were paying rents at Rs.200/- per year to the MANSAS though irregularly. After patta was granted in favour of MANSAS, late Adinarayana and after him, defendants 1 and 2 made applications to the MANSAS offering to purchase the

lands, though they mentioned that it was without prejudice to their contentions. Though the Special Deputy Tahsildar granted patta in favour of MANSAS, the Revenue Divisional Officer on extraneous consideration, set aside the patta granted in its favour holding that the Settlement Officer alone has jurisdiction. As against the order, it has preferred the revision before the Commissioner, Survey Settlement and Land Records. In fact, the tenants paid the rents and remitted the same in the State Bank of India, Fort Branch. Since the defendants were denying the ownership of the Trust as well as the character of the land, though they were tenants holding over without consent, Trust was forced to file the suit for declaration that it was the owner of the plaint schedule land and right to evict the defendants and collect damages for use and occupation since 01-07-1991 to 30-06-1995. The defendants are getting profit of Rs.7,200/- per year. Accordingly, it has claimed damages of Rs.21,600/- for three years at Rs.7,200/- per year. The Civil Court has jurisdiction to go into the question of title.

7. The appellants-writ petitioners resisted the suit alleging that Prasadula Adinarayana, their father, obtained patta from the Settlement Officer. The property is a zeroyati land. They have acquired rights of occupancy even from the period of their predecessors. In the year 1950, Prasadula Adinarayana was granted ryotwari patta No.293 for the entire extent of Ac.8.55 cents. Rajah did not carry the matter in appeal. Therefore, the patta issued by Settlement Officer has become final. It cannot be challenged in Civil Court in view of the provisions of Estates Abolition Act. Rajah of Vizianagaram, filed eviction petitions before Tahsildar, Vizianagaram and they were dismissed. As they are holding patta, they were not liable to be evicted. The plaintiff

is not the owner of the property. It is not entitled to evict them. The Civil Court has no jurisdiction to go into the question of right, title and ownership. The jurisdiction is ousted as much as a Tribunal was constituted in order to determine the said question. The plaintiff is not entitled to any mesne profits. The suit was barred by limitation. Therefore, they prayed for dismissal of the suit with costs.

8. Upon the pleadings, the trial Court framed the following issues and additional issue:

1) Whether the plaintiff is entitled for declaration as prayed for?
2) Whether the plaintiff is entitled for mesne profits as prayed for?
3) Whether the Civil Court has no jurisdiction to entertain this suit?
4) To what relief?

Additional issue:

1. Whether the plaintiff is entitled for recovery of possession after evicting the defendants from the schedule property with standing crop thereon, if any?

9. The plaintiff MANSAS in proof of its case, examined PWs.1 and 2 and filed Exs.A1 to A13, importantly, Ex.A9 order issued by the Deputy Tahsildar, dated 31.10.1978 and Ex.A10 order issued by the Revenue Divisional Officer, dated 29.2.1992. Refuting their evidence, D1 was examined as DW.1 and filed Exs.B1 and B2.

10. The trial Court after considering the oral and documentary evidence on record upheld the claim of the MANSAS though the appeal preferred by the tenants against the order of Special Deputy Tahsildar, Inams, was allowed, and the revision preferred by the MANSAS was equally allowed remanding the matter. The High Court granted stay, when the trust filed writ

petition against the remand order of the commissioner. The trial Court observed:

> "The defendants herein filed writ petition before the High Court in which stay was granted by the High Court. Thus, the proceedings under Inams Abolition Act have not become final. In those circumstances, it is evident from the record that the defendants have got only right of tenancy but are not absolute owners."

The trial Court also opined that the suit was not barred by limitation and that it has jurisdiction to try the suit. Consequently, it has decreed the suit declaring that the MANSAS is the owner of the schedule property and the possession of the defendants is that of trespassers. It has also awarded mesne profits from 18-01-1993 till the date of filing of the suit, and subsequent profits till delivery of possession. However, it directed that each party do bear its own costs.

11. Aggrieved by the Judgment the tenants preferred the appeal. They have filed writ petition against the order of the Commissioner in remanding the matter to the Revenue Divisional Officer. The tenants contended that the Commissioner as well as the Court should have taken note of ryotwari patta issued by the Settlement Officer in favour of Adinarayana, about 30 years ago. At no time MANSAS has challenged the said proceedings. The Special Tahsildar has no jurisdiction to set aside the patta issued by the Settlement Officer under the Act, 1948. Equally they contended that the trial Court did not appreciate as to the nature of the land and the fact that the patta was issued in their favour by the Settlement Officer about 30 years ago. It ought to have noted that the patta granted by Special Deputy Tahsildar, Inams, was set aside by the Revenue Divisonal Officer in the appeal preferred in

I.A.No.1 of 1979 under the Inams Abolition Act, 1956. The Civil Court has no jurisdiction to set aside the order of the Tribunal. Though Rajah alleged that the property fell to his share in a suit for partition, he did not prove the said fact by filing the said decree and judgment. When Ex.A-10 discloses that patta granted in their favour has become final, the trial Court cannot upheld title of the MANSAS. The suit was barred by limitation. In fact, they perfected title by way of adverse possession. Therefore, they prayed that the appeal be allowed.

12. In the light of the contentions, the following points arise for consideration:

1. What is the effect of pattas granted in favour of both the parties in parallel proceedings; one under Estates Abolition Act and another under Inams Abolition Act?
2. Which of the parties is entitled to a patta?
3. Whether the Civil Court has jurisdiction?
4. Whether the suit has barred by limitation?
5. To what relief?

13. It is undisputed fact that Rajah Saheb purchased the disputed lands along with some other lands (Ac.32.00 cents of wet and Ac.12.00 cents of dry) evidenced under registration extract of sale deed, Ex.A-1, dated 04-08-1894 from K.Jogi Sankara Rao. It includes the suit lands in possession of P.Jagganna and other. These lands are Darimila Inam wet lands (kirudu and nakirudu).

14. Rajah Saheb's firm MANSAS estate was established under Ex.A-11, trust deed, dated 12-11-1958, for the benefit of various educational institutions, run and maintained by the trust. It is also not in dispute that Vizianagaram estate was abolished and taken over by the Government on 07-09-1949. In the Trust Deed,

in Schedule V, the disputed property is mentioned against patta No.36 giving the following details of T.S.Nos. and extents. It is as follows:

| S.No. | Name of village & Pattadar | Patta No. | T.S. No. | Dry Extent | Wet Extent | Total Extent |
|---|---|---|---|---|---|---|
| 1. | Prasadula Adinarayana | 36 | 2-2Z<br>Part.D2<br>Z/D1<br>Z/D3 | | 7-80<br><br>1-00<br>0-50 | 7-80<br><br>1-00<br>0-50 |
| | | | Total | | 9-30 | 9-30 |

15. MANSAS claimed Ac.39.69 cents covered by T.D.948 on the ground that it became the owner of the land by virtue of the trust deed dated 12-11-1958. The dispute pertains to Ac.8.56 cents of land in the possession of writ petitioners/appellants. Accordingly, the Secretary, MANSAS, filed an application under Section 7 (1) of the Act, 1956 for issuance of a patta to an extent of Ac.39.69 cents in T.D.948 before Special Deputy Tahsildar, Inam. He opined that it was enfranchised minor personal inam (wet) subject to payment of annual rent to the Vizianagaram Estate. He opined that mere possession of the inam land by any one, for any length of time, without being called or held as 'Inamdar' does not create in such person any right for the land under Section 4 (1) I.A. Act, 1956. Therefore, he upheld the contention of Rajah Saheb and issued ryotwari patta in respect of this land in favour of MANSAS.

16. The contention of the tenants was that Adinarayana has purchased the property under registered sale deed dated 22-04-1950 and the said land was surveyed and patta was issued by Settlement Officer and Rajah Saheb has no claim. MANSAS admitted that there was an enquiry by the Special Deputy

Tahsildar, Inam, prior to 1960 and it was contested. According to it no order was passed.

17. When appeal was preferred by the appellants-writ petitioners as provided under Section 7 (2) of the Act, 1956, the appellate authority, after considering the documents and various records etc., opined that a ryotwari patta was issued in favour of writ petitioners/appellants by Settlement Officer. The Inam of Rajah Saheb was registered along with the name of Sri Veera Guracharyulu under T.D.948. The lands that were purchased by Rajah Saheb are the minor inam lands along with other lands covered by T.D.948 and it was not free from cultivating tenants. This land along with other lands was assigned to V.G.Subbaiah Panthulu by the then Estate Collector under zeroyathi patta. When patta was issued in favour of P.Adinarayana, MANSAS ought to have agitated under the provision of E.A. Act, 1948. This has become final and settlement accounts were also in the name of P.Adinarayana. It was carried out in the revenue accounts during and after the supplementary survey resulting in the preparation of revised revenue accounts. Since patta was granted about 30 years ago, the Special Deputy Tahsildar, Inams, could not have taken cognizance of application under Section 7(1) of the Act and set aside the patta issued in favour of the appellants-writ petitioners and directed fresh ryotwari patta to be issued in favour of MANSAS.

18. When a revision was preferred against the said order, the Commissioner, Surveys settlements and land records, opined that when there is conflict between settlement adangal filed by the petitioner-appellants and the settlement adangal filed by the MANSAS, the real nature of proceedings ought to have been

enquired into. This is the crux of the matter.

19. In the suit filed by MANSAS for declaration of its title, the learned Judge did not go into the question as to the tenure of the land. Except narrating the facts, and the evidence let in, he did not determine the claim of either party. He did not mention as to why he was preferring the case of MANSAS as against the tenants.

20. As I have earlier pointed out, the trial Court allowed the suit filed by the MANSAS solely on the ground that the High Court granted stay against the orders of Commissioner and that the order of the Revenue Divisional Officer was set aside by the Commissioner when remanding the matter, necessarily, the order of the Special Deputy Tahsildar, Inams, prevails. This is convoluted logic. It is unfortunate that when the very question as to the title was in dispute before the competent Tribunal, the trial Court ought to have either waited for the out come of the proceedings before the Tribunals or ought to have pronounced its verdict as to the entitlement of patta.

21. The learned counsel for MANSAS contended that when a grant is under Section 11, suit lies. In support of his contention, he relied decisions in **CHAKALA ANJAPPA Vs. BETAPPAGARI ANJANEYA ALIAS ANJAPPA & OTHERS**[1], **KOSURU VENKATA KRISHNAIAH AND OTHERS Vs. MOLAKALA SIDDA REDDY AND OTHERS**[2], **SAJANA GRANITES, MADRAS & ANOTHER VS. MANDUVA SRINIVASA RAO and OTHERS**[3], **SANAPALA NARASAMMA Vs. STATE OF A.P. and OTHERS**[4] AND **THE STATE OF A.P. v. VEERAMREDDI RAMAJAN &**

**OTHERS**[5]**.**

22. On the other hand, the learned counsel for ryots contended that when patta was granted under Section 11, no civil suit was maintainable. In support of his contention, he relied decisions in **T.MUNUSWAMI NAIDU Vs. R. VENKATA REDDY**[6]**, MADDADA CHAYANNA Vs. KARNAM NARAYANA & OTHERS** [7]**, ANNAMREDDI BODAYYA & ANOTHER Vs. LOKANARAPU RAMASWAMY**[8]**, VATTICHERUKURU VILLAGE PANCHAYAT Vs. NORI VENKATARAMA DEEKSHITHULU & OTHERS**[9]**. K.CH.RAMAYYA V. N.V.R.DEEKSHITULU & OTHERS**[10]**, PUTTAGUNTA VEERAYYA AND OTHERS V. YANAMANDRA PUNAMMA AND OTHERS**[11] AND **ADDANKI TIRUVENKATA THATA DESIKA CHARYULU V. STATE OF ANDHRA PRADESH**[12]**.**

23. It is unfortunate that in spite of the rival contentions that pattas were obtained by them, the learned District Judge did not go into the question to determine the tenure. As I have earlier pointed out, solely on the ground that the High Court granted stay, he opined that the patta issued by the Special Deputy Tahsildar prevails. He did not give any reasons as to why he did not upheld the patta granted in favour of the tenants by the Settlement Officer. The Commissioner in the revision, remanded the matter directing the Revenue Divisional Officer to determine the tenure.

24. In view of the peculiar nature of the matter, I do not see any irregularity when the learned Commissioner remanded the matter to determine the tenure after going into the original record.

This Court is handicapped for want of original records so as to determine the tenure. The order of the learned District Judge, opining that it was an inam, is not based on any evidence. Therefore, I upheld the order of the learned Commissioner in remanding the matter to determine the nature of the lands by verifying the original records. There are conflicting Settlement Adangals filed by both parties.

25. WPMP.No.14459 of 1997:

The tenants enclosed the certificate issued by the Mandal Revenue Officer, Vijayanagaram, certifying that S.No.155 admeasuring Ac.8.56 cents was registered in the name of Sri Prasadula Adinarayana under Patta No.293 as per the proceedings of the Deputy Tahsildar (Inams) and the same was covered by T.D.948, enfranchised minor Inam (Darimala Inam) in S.R.No.37/66 dated 31.10.1978. In view of the fact the matter remanded to the trial court, the petitioners can as well file the same at the time of enquiry. With this observation, the petition is closed.

26. ASMP.Nos.243 & 1003 of 2006:

The tenants filed these petitions to receive Decree and Judgment in O.S.No.32 of 1995 dated 18.5.2004, on the file of the Senior Civil Judge, Vizainagaram as additional evidence and the certificate issued by the Mandal Revenue Officer dated 25.5.2006 certifying that S.No.155 measuring Ac.8.56 cents stands registered in the name of Sri Prasadula Adinarayana under Patta No.293, by virtue of proceedings of the Deputy Tahsildar (Inams) that the land in S.No.155 was covered by T.D.948 and it was enfranchised minor Inam in S.R.No.37/66 dated 31.10.1978 as additional evidence, since the suit is being remanded to the trial

Court, the petitioners can as well take return of these documents and file before the learned District Judge and proceed with the trial as per law. With these observations, the petitions are closed.

27. The Writ Petition is dismissed, confirming order of remand passed by the Commissioner.

28. The appeal is allowed. Consequently, the Decree and Judgment in O.S.No.27 of 1999 are liable to be set aside. The suit is remanded to the trial court giving opportunity to both the parties to produce relevant records that are being produced and necessarily before the Revenue Divisional Officer, Vizianagaram. The trial court can as well base its decision on the original documents verified in the above proceedings. Since the matter has been pending for the last several years, I deem it appropriate to fix time schedule for the Revenue Divisional Officer, Vizianagaram to determine the question. He is directed to complete the enquiry as directed by the Commissioner and pass orders within six months from the date of issuing of this order. The trial court is directed to dispose of the suit within three months after disposal of the matter by the Revenue Divisional Officer, as the same documents will have to be necessarily filed before him. In the circumstances, each party do bear its own costs.

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JUSTICE D. APPA

RAO
9th March 2007

BCS/KVR

[1] 1990 (II) An.W.R.98

[2] 1990(1) ALT 163 (DB)

[3] 2002(1) ALT 466 (DB)

[4] 2006(1) ALD 297

[5] 1991 (1) L.S. 257

[6] AIR 1978 A.P. 200 (FB)

[7] (1979) 3 SCC 42

[8] 1984 (Supp.)SCC 391

[9] 1991 Supp.(2) SCC 228

[10] 1976 ALT 65 (S.N.)

[11] 1958 An.W.R.134

[12] 1964-AIR(SC)-0-807.